



April 12, 2002

Ms. Sara Ruth Spector
Assistant District Attorney
Bastrop County
804 Pecan Street
Bastrop, Texas 78602

OR2002-1830

Dear Ms. Spector:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161224.

The Bastrop County Animal Control (the "county") received two written requests for all records pertaining to the requestor's client and another named individual in connection with complaints filed with the county. You inquire whether the requested information is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with the informer's privilege.¹

Section 552.101 of the Government Code excepts from required public disclosure information coming within the "informer's privilege." *See generally* Open Records Decision No. 515 (1988). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. [Citations omitted.] The purpose of the privilege

¹We note that you submitted to this office additional documents, which we have marked, that do not appear to be responsive to the current records request. Consequently, we do not discuss the public nature of those documents in this ruling.

is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, by preserving their anonymity, encourages them to perform that obligation.

The "informer's privilege" aspect of section 552.101 protects the identity of persons who report violations of the law. Although the privilege ordinarily applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 285, 279 (1981); *see also* Open Records Decision No. 208 (1978). This may include enforcement of quasi-criminal civil laws. Open Records Decision Nos. 515 (1988); 391 (1983). When information does not describe conduct that violates the law, the informer's privilege does not apply. Open Records Decision Nos. 515 (1988), 191 (1978). Additionally, the privilege protects the substance of communications only to the extent that it would tend to reveal the identity of the informant. *Roviaro v. United States*, 353 U.S. at 60.

Because part of the purpose of the privilege is to prevent retaliation against informants, the privilege does not apply when the informant's identity is known to the individual who is the subject of the complaint. *See* Open Records Decision No. 208 (1978). After reviewing the submitted information, it is apparent to this office that the requestor's client is aware of the fact that the other named individual filed a complaint against him. We therefore conclude that the informer's privilege is inapplicable in this instance. Consequently, the county must release the requested information in its entirety, with the following exception.

We note that some of the records you submitted to this office contain various e-mail addresses. Section 552.137 of the Government Code makes certain e-mail addresses confidential and provides in relevant part:

- (a) An e-mail address *of a member of the public* that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release. [Emphasis added.]

Among the e-mail addresses contained in the documents at issue are those of county employees; such addresses are not made confidential under section 552.137 and therefore must be released. However, the communications also contain e-mail addresses of private individuals. It does not appear to this office that any of those individuals have affirmatively

authorized the county to release their e-mail address. Accordingly, section 552.137 of the Government Code requires the county to withhold the e-mail addresses of those members of the public, unless the individual who provided the e-mail address has affirmatively consented to its release.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Kristen Bates". The signature is fluid and cursive, with the first name "Kristen" and last name "Bates" clearly distinguishable.

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/RWP/sdk

Ref: ID# 161224

Enc. Submitted documents

c: Mr. Derek R. Van Gilder
Law Office of Derek R. Van Gilder
916 Main Street
Bastrop, Texas 78602
(w/o enclosures)

Mr. Robert Wells
Law Office of Derek R. Van Gilder
916 Main Street
Bastrop, Texas 78602
(w/o enclosures)